TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 38

JOHN E. ROCHE, PLAINTIFF IN ERROR,

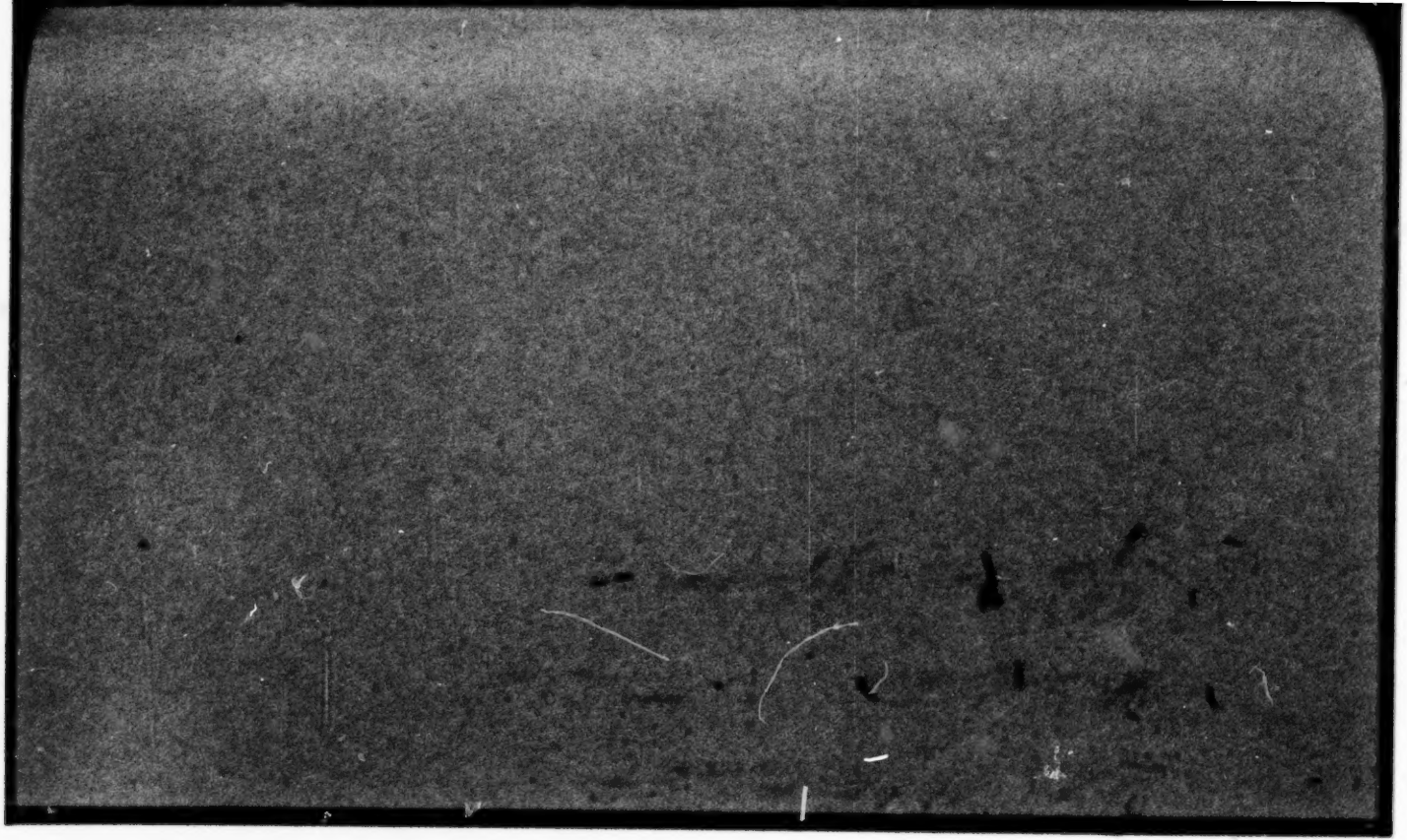
vs.

D. E. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

[redacted]

(21,001)



(31,801)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 326

JOHN H. ROCHE, PLAINTIFF IN ERROR,

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 29, 1926

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IN SUPERIOR COURT OF SPOKANE COUNTY

No. 73637

JOHN H. ROCHE, Plaintiff,

vs.

D. K. McDONALD, Defendant

BILL OF COMPLAINT—Filed October 25, 1924

Plaintiff complains of defendant and for cause of action alleges:

I

That at all times herein mentioned the Circuit Court of the State of Oregon, in and for the County of Marion, was a Court of general jurisdiction, duly created and organized by the Constitution and laws of the State of Oregon.

II

That on the first day of October, A. D. 1924, in the Circuit Court of the State of Oregon for the County of Marion, this plaintiff recovered a judgment against the defendant, D. K. McDonald, in the sum of Eighteen Thousand Two Hundred Eighty three Dollars and 98/100 ($18,283.98), together with interest thereon at the rate of six per cent per annum, and for the sum of Fifteen Dollars ($15) for plaintiff's costs and disbursements.

III

That said above named Court had jurisdiction of the person of said D. K. McDonald and of the subject matter of the suit in which said judgment was rendered.

IV

That said judgment mentioned herein was rendered in an action pending in the above named Court wherein this plaintiff was plaintiff and said defendant D. K. McDonald,

[fol. 2] was defendant; that said cause was numbered on the docket of the above named Court, 16918.

V

That said judgment remains wholly unpaid and unsatisfied.

Wherefore plaintiff prays that he have judgment against the defendant, D. K. McDonald, in the sum of Eighteen Thousand Two Hundred Eighty three and 98 100 Dollars ($18,283.98) together with interest thereon at the rate of six per cent per annum from the first day of October A. D. 1924.

F. W. Girand, Attorney for Plaintiff.

Duly sworn to by John H. Rocke. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 3] In Superior Court of Spokane County

[Title omitted]

Answer—Filed January 29, 1925

For answer to the complaint, defendant:

1. Admits the allegations contained in the first, second, fourth and fifth paragraphs of the complaint.

2. Admits that the court referred to in the complaint had jurisdiction of the person of defendant; denies that it had jurisdiction of the subject matter of the suit in which the judgment sued upon was rendered, save to the extent and for the purposes indicated by the affirmative matter hereinafter pleaded.

Further answering and for an affirmative defense, defendant alleges:

1. Plaintiff is, and for more than thirty years last past has been, continuously a citizen and resident of the State of Washington. He is and during the whole of the period

aforesaid has been, an attorney and counsellor at law, licensed to practice law in the courts of the State of Washington, having his domicile and being engaged in the practice of his profession in the City and County of Spokane in said State. Defendant is, and for more than forty years last past has been, a citizen and resident of the State of Washington. During the last thirty years he has been engaged in business and has continuously resided with his family in the City and County of Spokane in said State, and has maintained a house of usual abode therein, oc- [fol. 4] cupied by himself and his family. At no time during the period aforesaid has he resided or had any property of any character in the State of Oregon. For at least the last thirty years plaintiff has known defendant personally, and has known that his residence was in the City and County of Spokane, and that he had neither residence nor property in the State of Oregon.

2. In the year 1917, L. S. Dart and his wife began an action ex delicto against this defendant and others in the Superior Court of the State of Washington for Spokane County, seeking to recover damages for a tort alleged to have been committed by the defendants in such action, the cause being numbered 54,589 upon the docket of the court. Thereafter, upon, to wit; June 24, 1918, judgment for $12,750, together with costs, was rendered in that action in favor of the plaintiffs therein and against this defendant and others named as defendants therein. No proceedings were ever thereafter taken to revive such judgment, nor was any action brought thereon in the courts of the State of Washington, or elsewhere, save the action brought in the courts of the State of Oregon, as hereinafter alleged.

3. On February 27, 1924, the Darts, judgment creditors in the cause No. 54589 referred to in the preceding paragraph, assigned the judgment aforesaid to the plaintiff herein, and he thereafter in March, 1924, brought an action thereon in the Circuit Court of the State of Oregon for Marion County. The complaint in said action is attached to this answer, marked "Exhibit A," and is prayed to be read as a part hereof as though fully set forth at this point. Service of the summons in such action was made upon this defendant while he was temporarily within the State of

Oregon, and thereafter, upon, to-wit, October 1, 1924, judgment was rendered therein by the court aforesaid upon the [fol. 5] cause of action pleaded in "Exhibit A" in favor of plaintiff and against defendant for the sum of $18,283.98. No execution was ever issued upon such judgment, or was any attempt to enforce it in any way ever made in the State of Oregon.

4. The judgment sued upon herein was rendered by the Circuit Court of the State of Oregon in and for Marion County upon the complaint attached to this answer as Exhibit A. It was rendered in an action brought in the Circuit Court of Oregon aforesaid upon the judgment rendered by the Superior Court of the State of Washington for Spokane County upon June 24, 1918, in the cause No. 54,586 referred to in the second paragraph of this affirmative defense, and there was no other foundation for the Oregon judgment sued upon herein than the judgment rendered by the Washington court on June 24, 1918, heretofore referred to.

5. Plaintiff knew that he could not, and did not intend to attempt to, enforce the judgment recovered by him in the courts of Oregon within that State. His sole purpose in suing in the courts of Oregon upon the judgment recovered in the courts of Washington was to evade the operation of the Washington statutes relating to the duration of the lien and charge of judgments rendered by the courts of Washington, and by procuring a judgment in the courts of Oregon upon the Washington judgment, and then suing upon the Oregon judgment in the courts of Washington, to continue the lien and charge within the State of Washington of the original Washington judgment, rendered on June 24, 1918, as aforesaid, for a longer period than that permitted by Sections 459 460 of Remington's Compiled Statutes of Washington.

Wherefore, having fully answered, defendant prays that this action may be dismissed; that he go hence without day and recover his costs.

Graves, Kizer & Graves, Attorneys for Defendant.

[fol. 6] Due service of the within Answer accepted this 31st day of December, 1924.

F. W. Girand, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 7] EXHIBIT A TO ANSWER

IN THE CIRCUIT COURT OF THE STATE OF OREGON IN AND FOR THE COUNTY OF MARION

JOHN H. ROCHE, Plaintiff,

vs.

D. K. McDONALD and MAUD S. McDONALD, His Wife; GEORGE E. SNYDER, and D. A. McKINNON, Defendants

Complaint

The plaintiff complains of defendants and each of them and for cause of action alleges:

I

That at all times hereinafter mentioned the Superior Court of the State of Washington in and for the County of Spokane, in the State of Washington, was a Court of general jurisdiction, duly created and organized by the constitution and laws of said State of Washington.

II

That on the 24th day of June, 1918, the above named Court mentioned in Paragraph I hereof, rendered a Judgment against the above named defendants D. K. McDonald and Maud S. McDonald, his wife, George E. Snyder and D. A. McKinnon in the cause of L. S. Dart and C. Florence Dart vs. D. K. McDonald and Maud S. McDonald, his wife, D. M. Drumheller, John Twohy, Frank S. Ostrander, D. A. McKinnon, George E. Snyder, John F. Green and Eric T. Richter, the number of said cause on the Docket of said Court mentioned in paragraph I hereof being 54589, said Judgment being rendered against each of the above named

defendants in this cause in the sum of Twelve Thousand Seven Hundred and Fifty ($12,750.00) Dollars, and costs in the sum of Three Hundred Eighty six and 62 100 ($386.62) Dollars. That said judgment bears interest at the rate of Six (6) per cent per annum from the 24th day of June, 1918.

[fol. 8] III

That at the time of the rendition of said Judgment, the Court named in Paragraph one hereof had jurisdiction of the persons of each of the defendants in this cause and of the subject matter.

IV

That said above described Judgment, ever since the date of its rendition, has been and now is a valid and subsisting judgment against each of the defendants named in this cause and is wholly unsatisfied and unpaid.

V

That there is now due and owing upon said Judgment the sum of Seventeen Thousand Six Hundred Seven six and 57 100 ($17,676.57) Dollars.

VI

That on the 27th day of February, 1924, at Spokane, Washington, the said L. S. Dart and C. Florence Dart, plaintiffs in the above described judgment, for a valuable consideration, assigned said Judgment to this plaintiff, and ever since said time has been, and now is the legal owner and holder thereof.

Wherefore plaintiff prays that we have judgment against the defendants D. K. McDonald and Maud S. McDonald, his wife, George E. Snyder and D. A. McKinnon in the sum of Seventeen Thousand Six Hundred Seventy six and 57 100 ($17,676.57) Dollars, with interest thereon from date of judgment at the legal rate per annum, and for his costs and disbursements herein.

F. W. Girard, Attorney for Plaintiff. John H. Roche, In Propria Persona.

[fol. 9] *Duly sworn to by John H. Roche. Jurat omitted in printing.*

[fol. 10] IN SUPERIOR COURT OF SPOKANE COUNTY

[Title omitted]

REPLY—Filed March 18, 1925

Now comes the plaintiff and replies to defendant's affirmative defense and alleges as follows:

I

Denies that at no time during the period mentioned in paragraph one, defendant has resided or had any property of any character in the State of Oregon; and in this connection alleges that for a goodly portion of time during the past three or four years, the defendant has been in the State of Oregon, and has had and now has large property interests near West Stayton, County of Marion, State of Oregon, and denies each and every other material allegation contained in said paragraph one.

II

Denies each and every allegation contained in paragraph five of defendant's affirmative defense and in this connection alleges that this plaintiff intended to prosecute said action in Oregon and did prosecute the same in good faith; that he believed then and believes now that the defendant had property interests in the State of Oregon and now has interests in property in the State of Oregon.

III

And in reply generally to the affirmative matters set out in defendant's answer, plaintiff alleges: That this action is brought under Article four, Section one of the Federal Constitution as follows: Full faith and credit shall be given [fol. 11] in each state to the public acts, records, and judicial proceedings of every other state and the Congress may, by general laws, prescribe the manner in which such acts,

records, and proceedings shall be proved and the effect thereof.

Wherefore, plaintiff prays that having fully replied to defendant's Answer and Affirmative Defense, that he have judgment according to the prayer of his complaint herein.

F. W. Girand, Attorney for Plaintiff.

Duly sworn to by John H. Roche. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] In Superior Court of Spokane County

[Title omitted]

Findings of Fact and Conclusion of Law—Filed March 24, 1925

1. Plaintiff is and for more than thirty years last past has been continuously a citizen and resident of the State of Washington. During the whole of that period he has been actively engaged in the practice of law in the City and County of Spokane in said State.

2. Defendant now is and for more than thirty years last past has been a citizen and resident of the City and County of Spokane in the State of Washington, and during the whole of that time he has maintained a house of usual abode therein occupied by himself and his family. At no time has the defendant resided or had property of any character in the State of Oregon. For at least the last thirty years plaintiff has known the defendant personally and has known that his residence was in the City and County of Spokane in the state aforesaid.

3. Plaintiff claims to have had some kind of general and indefinite information communicated to him that the defendant owned property in the State of Oregon. Apparently, however, he did not pursue the subject further, either before or after the bringing of the suit and obtaining of the judgment in Oregon alleged in the pleadings in this case.

4. Defendant was served in the Oregon case while he was temporarily in the State of Oregon.

[fol. 13] 5. Plaintiff has taken no steps to enforce the Oregon judgment in the State of Oregon; that judgment was rendered, as is admitted by the pleadings, upon the 1st day of October, 1924. On the 25th of the same month this suit was brought in this court. The plaintiff has done nothing with his Oregon judgment beyond suing upon it in the State of Washington.

6. Whatever plaintiff's purpose may have been in suing in the State of Oregon and taking the judgment, the course pursued by him since is consistent only with the purpose and intention of evading the statute of this state upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant.

7. All other material facts in the case are admitted by the pleadings.

Conclusion of Law

It is the conclusion of the Court upon the foregoing facts found and upon the facts admitted by the pleadings that plaintiff is not entitled to recover and that defendant should have judgment.

Done in open Court this 24th day of March, 1925.

Wm. A. Huneke, Judge.

Copy of the within Findings of Fact and Conclusion of Law received this — day of March, 1925.

————, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 14] In Superior Court of Spokane County

[Title omitted]

Exceptions to Findings of Fact—Filed March 28, 1925

Now comes the plaintiff and excepts to Findings of Fact No. 6, made and signed by the Court.

F. W. Girand, Attorney for Plaintiff

Service of Copy accepted March 28, 1925. ——, Attorney for Defendant.

[File endorsement omitted.]

[fol. 15] In Superior Court of Spokane County

[Title omitted]

Judgment—Filed March 24, 1925

This cause having been tried by the Court without a jury, and the Court having heard the testimony and having made Findings of Fact and having stated its Conclusion thereon, and being fully advised in the premises, upon such testimony and findings and the whole record in the case.

It is considered by the Court here that plaintiff take nothing by his said suit; that defendant go hence without day and have and recover his costs to be taxed.

Done in open Court this 24th day of March, 1925.

Wm. A. Huneke, Judge

Copy of the within Judgment received this —— day of March, 1925. ——, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 16] D. K. McDonald, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Graves:

Q. Mr. McDonald, you are the defendant in this case?
A. Yes sir.
Q. Where do you reside?
A. East 228 Mission, Spokane.
Q. Washington?
A. Spokane, Washington.
Q. How long have you resided in Spokane?
A. Thirty-four years.
Q. Continuously?
A. Yes sir.
Q. Do you know Mr. Roche the plaintiff?
A. Yes sir.
Q. How long have you known him?
A. Oh, thirty years or more, over thirty years.
Q. During that time has he been a continuous resident of this city?
A. Yes sir.
Q. Did you ever reside in Oregon?
A. No sir.
Q. In the year 1924 did you reside in Oregon?
A. No sir, I was down there temporarily for a short time.
Q. For what temporary purpose were you there? State the facts.
A. The Modern Irrigation and Land Company with whom I was employed, got an option contract on some land in Marion County, Oregon, and I was down there trying to develop it and sell it.
Q. Did you have any interest in the company?
[fol. 17] A. No sir, except I was secretary; had one share in my name.
Q. You were employed by the company?
A. I was employed by the company on a salary.
Q. How long were you there, off and on, about how much of the time?
A. Oh, for about a year and a half I was there close to

half the time, for nearly a year and a half, for about seventeen months I was there about half the time.

Q. During that time where was your home and residence?

A. East 228 Mission.

Q. Where you resided for many years?

A. For twenty-seven years.

Q. And your family was here?

A. Yes sir.

Q. And when you were down there did you have any home or just board some place?

A. No, I boarded at a house there, on West Dayton; paid $9.00 board and lodging.

* * * * * * *

[fol. 18] John H. Roche, the plaintiff, called in his own behalf in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Girard:

Q. Mr. Roche, when you brought this suit in Oregon state to the court whether or not you had any information as to Mr. McDonald owning or holding any real estate or other property in the State of Oregon?

A. I had. By inquiring around I understood that he was doing business down there, had an interest in a 1,000 acres of land or more and of course he probably had it in somebody else's name, but he had been there for a great number of months, and they had a very large project, and Mr. Houchens specially told me that he and McDonald were working together, and they expected to make a big thing down there and they had a contract with the Steele Company of Portland, and when they got through they expected to make a very good thing out of it on the sale of that property, when they had it properly irrigated and so on, and very fine business chances, so I went down there for the purpose of suing McDonald there and catching his interest down there in that state if I possibly could.

Q. Mr. Roche, they charge you with bad faith in bringing that suit?

Mr. Graves: Nobody said anything charging him with bad faith at all.

The Court: It is suggested in the brief.

Mr. Graves: It isn't bad faith in any sense except that a man is charged with the actual, inevitable consequences of his conduct, that is all.

Mr. Girand: Will you admit then——

Mr. Graves: He was not acting in any vicious manner or [fol. 19] from any motive except a motive as result of necessity from his own conduct, that is all.

Mr. Girand: If that is all we can strike that out.

Cross examination.

By Mr. Graves:

Q. Mr. Roche, you got your judgment down there on the 1st day of October, 1924?

A. I think that is what the record shows.

Q. That is what you allege in your complaint. Will you also verify it?

Mr. Girand: Yes, that is the date without any doubt.

A. Yes, I think that is the date.

Mr. Graves: You got your judgment in the Circuit Court of the State of Oregon for the County of Marion against Mr. McDonald, the judgment you sue on in this case, on the 1st day of October, 1924, did you?

A. Yes.

Q. On the 25th day of that month you sued on that judgment in this court, did you not?

A. Yes.

Q. Between the 1st day of October when you got that judgment and the 25th day of October when you sued on it here, beyond having a certified copy of it sent to you, what did you do towards enforcing it?

A. We brought this action, and it has been here in court until——

Q. No, you misunderstand me. I say between the 1st day of October——

A. Enforcing it down there?

Q. Now, listen to the question please and then you will [fol. 20] understand. Between the first day of October, 1924, when you procured this judgment now in suit and the 25th of the same month when you sued on it in this court, what did you do with it besides having it certified up here?

Mr. Girand: I object to that for the reason that it does not tend to prove any issue in this case and second, the judgment in Oregon is still alive.

The Court: He can answer.

A. I understood Mr. McDonald had left over there and he was here again and I just concluded to bring my suit here and catch what I could catch here.

Q. I assume that is what you thought.

A. And also what I have over there.

Q. Now, don't make any speech, Mr. Roche. Remember you are a witness. Now, prior to suing there, you had known D. K. McDonald a great many years, hadn't you?

A. I had known him for a long time.

Mr. Girand: I object to that as improper cross examination.

The Court: I don't know what the purpose is.

Mr. Graves: Just preliminary.

Mr. Girand: Go ahead.

Mr. Graves:

Q. And you say you understood he had left down there and came back up here?

A. Yes, sir.

Q. Just a minute, now, Mr. Roche. Had you made any inquiry before bringing that suit down there as to whether he had abandoned his home here, whether he was not living here, in the place in which he had lived for a great many years?

A. I was not interested in that point. I was interested in the fact that he had property down there and had a big [fol. 21] enterprise and I was going to try to catch him down there if I could.

Q. Now then, you were not interested in whether he lived down there or not, you say?

A. Well, he was living down there, but whether he had moved, what you call his domicile down there and had left Spokane entirely, I didn't care, but I knew he had been down there for sixteen or seventeen months, more or less.

Q. What I was getting ready to ask you was you remarked a while ago that you immediately brought that judgment up here and sued on it here because you understood he had moved from there here?

A. That he had come up here, yes sir.

Q. So as a matter of fact you got a judgment on the first of October and sued it up here on the 25th and that is all you ever did with it, isn't it?

A. Yes, he left down there and I thought I would catch him up here again.

Q. And incidentally of course you understood that you would have a live judgment up here instead of a dead one?

A. That is it now.

Q. And your real purpose was to get rid of a dead judgment from Oregon and transmit it into a live one?

A. No, I intended to catch some property down there, down in Oregon, besides I was informed also that he really was not living with his wife and that he was separate and apart and he was down there and doing business down there, but I didn't inquire whether he had really left Spokane entirely or not, but I wanted to catch him down there if I could and get something. I didn't expect $18,000, but get something.

[fol. 22] Q. Then you wanted to get a live judgment here on the Oregon judgment, if you could, that was your main object, wasn't it?

A. No, No.

Q. One of your objects, wasn't it?

A. First object to get what I could, and I didn't think of this other up here at the time. I was only thinking to just grab him down there and get something on my judgment.

Q. And then get a live judgment up here?

A. It was alive here then.

Q. On the first of October?

A. No, it wasn't the first of October, but it was when it was down there.

Q. But when you took your judgment you knew it was dead up here?

A. I guess the record shows that, yes.

Q. That is what you knew?

A. I don't know. I didn't pay any attention to that. I suppose if I looked it up I would know right quick that it was.

Q. You are a lawyer?

A. But it wasn't dead in Oregon for two years more.

Q. Pardon me, you are a lawyer?

A. You bet.

Q. I don't want you to bet. You know you are?

A. Yes.

Q. You have been practicing in this city and state for a good many years?

A. I have been thirty years, Mr. Graves.

Mr. Biraud: I object because it is not proper cross examination.

[fol. 23] The Court: Overruled.

(Witness excused.)

[fol. 24] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 25] In Supreme Court of Washington

No. 19340, Department One

John H. Roche, Appellant,

v.

D. K. McDonald, Respondent

Opinion—Filed October 16, 1925

The plaintiff, Roche, commenced this action in the superior court for Spokane county seeking recovery from the defendant, McDonald, upon a judgment rendered by the circuit court of the state of Oregon for Marion county, which judgment was rendered by that court upon a judgment rendered by the superior court of this state for Spokane county. A hearing upon the merits resulted in

judgment denying to the plaintiff the relief prayed for, from which he has appealed to this court.

The conceded and proven controlling facts, in so far as we need here notice them, may be summarized as follows: Appellant and respondent have both been residents of Spokane county for a period of more than thirty years past. In the year 1917 one Dart commenced an action in the superior court for Spokane county seeking recovery of damages from respondent and others. Such proceedings were had therein that on June 24, 1918, judgment was rendered by that court in favor of Dart and against respondent and his co-defendants, awarding recovery in the sum of $12,75[illegible]. No action seeking revival of or recovery upon that judgment in any court has ever been taken other than the Oregon suit herein question, and we assume that no part of the obligation so evidenced has ever been paid. On February 27, 1924, Dart duly assigned that judgment, and all sums due thereon, to appellant. On March 15, 1924, [fol. 26] appellant commenced an action in the circuit court of Oregon, for Marion county, seeking recovery on that judgment. At that time appellant was temporarily in Oregon where he was personally served with summons in that action, so as to give that court jurisdiction over his person and the controversy, in so far as the facts pleaded in the complaint might authorize the rendering of a judgment against him. The record before us is not very certain as to just what respondent did in the way of appearing in that action. It is conceded, however, by statements made in appellant's brief filed upon this appeal, that he did nothing more than demur to the complaint soon after the commencement of the action, which demurrer was by the court overruled, evidently before the expiration of a period of six years following the rendering of the judgment of the Washington court, and that thereafter he made no further response to the complaint and elected not to plead further. Thereafter on October 1, 1924, the Oregon court rendered judgment in that action in favor of appellant and against respondent in the sum of $18,28[illegible], evidently the amount of the Washington judgment, with interest from the time of its rendition. It is alleged in respondent's affirmative defense in this action, and not denied in appellant's reply thereto, that "there was no other foundation for the Ore-

gon judgment sued upon herein than the judgment rendered by the Washington court on June 24, 1918." Thus we are led to conclude that the judgment of the Oregon court was rendered against respondent solely upon the judgment of the Washington court because of respondent's failure to answer upon the merits.

In view of our principal problem being as to whether or not the Oregon judgment was a judgment within the power of the Oregon court to render at the time of its purported rendition, let us first inquire and decide as to whether or not that judgment was anything more than a mere default [fol. 27] judgment having for its support only the allegations of the complaint upon which it was rendered. It has, we think, been made plain by our above summary of the facts that the complaint in that action did not set up the semblance of a cause of action, other than the judgment of the Washington court; that there was no answer controverting the facts alleged in the complaint in that action; and that the judgment of the Oregon court was rendered solely upon the judgment of the Washington court for want of answer to the merits on the part of respondent in that action. There was no trial in the Oregon court participated in by respondent, and hence no possible trial amendments to the complaint. Therefore, the judgment of the Oregon court here sued upon was a default judgment, as completely so as if respondent had not appeared in the action and demurred to the complaint. 34 C. J. 147.

It has become the settled law of this state, and we think generally elsewhere in this country, that a judgment rendered by default, rested solely upon the allegations of a complaint so deficient in substance as to conclusively negative the existence of a cause of action at the time of its rendition, is void, or in any event voidable, and that such a judgment may be successfully assailed collaterally or otherwise, whenever it is sought to be made the foundation of a claim of right.

> State ex rel. First Nat. Bank v. Hastings, 120 Wash. 283, 207 Pac. 23.

Does it appear in this case that the judgment of the Washington court, which was the sole foundation of the judgment of the Oregon court, was, at the time of the rendering of the judgment of the Oregon court, no longer of any force and

effect? We think it affirmatively clearly so appears by the [fol. 28] allegations of the complaint in the Oregon case, in that it thereby appears that the judgment of the Washington court was rendered on June 24, 1918, and that the judgment of the Oregon court was rendered thereon more than six years thereafter. In Chapter 29, Laws of 1917, relating to the duration of judgments, referring to sections of Remington and Ballinger's Code, we read:

"[469. After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor.

"[468. No suit, action, or other proceedings shall ever be had on any judgment rendered in the state of Washington by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."

This statute, we think, is not a mere statute of limitation affecting a remedy only. It is more than that. It not only makes a judgment cease to be a "charge against the person or estate of the judgment debtor" after six years from the rendering of the judgment, but also in terms expressly takes away all right of renewal of or action upon the judgment looking to the continuation of its duration or that of the demand on which it rests, for a longer period than six years from the date of its rendition. It does not tell us when an action upon a judgment may be commenced. It simply tells us that no judgment can be rendered extending the period of duration of a judgment or of the claim or demand upon which it rests beyond the period of six years following its rendition. We have given full force and effect to this statute. Burman v. Douglas, 78 Wash. 204, 139 Pac. 41; Ball v. Bussell, 119 Wash. 206, 205 Pac. 423. We note that in Burman v. Douglas this statute is referred to as "one of limitation." A critical reading of that decision, however, will show that the question of whether it is an ordinary statute of limitation against the [fol. 29] commencement of an action, or a statute taking away a right of action, was not considered. We think that expression in that decision should not be regarded as of any controlling force in our present inquiry. In Ball v.

Bussell, we held in effect that the statute took away all right of action for recovery upon a judgment in so far as such recovery could be made effectual beyond the period of six years from the rendition of the judgment. In that case, while six years had not expired following the rendition of the judgment at the time of the commencement of the action, six years had expired before the rendition of the judgment in the action thereon. We there said:

"It so happens that the life of the original judgment here in question expressed on March 31, 1921, which, it will be noticed, was only eight days following the entry on March 23, 1921, of the judgment here upon appeal. It follows from our view of the law, as above expressed, that at this time both the original judgment and the judgment which is here upon appeal must be held to be no longer a charge against the person or estate of appellant. If six years following the entry of the original judgment had not at this time expired, we would remand the case to the superior court with directions to embody in the judgment here on appeal appropriate language specifically limiting its life to the same period as that of the life of the original judgment, to wit, six years following March 31, 1915; which period would end March 31, 1921. But, there not being at this time any necessity for such a direction, we simply conclude that the judgment appealed from must now be held to be of no force or effect following March 31, 1921, and that to that extent it should be set aside and held for naught."

We conclude that had appellant sued in a superior court of this state upon the judgment rendered in the superior court for Spokane county, of this state, and recovered judgment thereon as he did in the Oregon court more than six years following the rendition of the original judgment, and such recovery had been by default as it was in the Oregon court, we would now unhesitatingly hold such judgment to be void and of no effect.

Now shall the judgment rendered by the Oregon court upon the original judgment rendered by the Washington [fol. 20] court be held of greater force when in turn sued upon in this state than a judgment rendered by a Washington court upon an original judgment rendered by a Wash

ington court; that is, shall the courts of Washington accord to this judgment rendered by the Oregon court any greater force or effect than the courts of Washington would accord to such a judgment rendered by a Washington court? Since, as we have observed, we would hold such a judgment of our own court void and of no effect, why should we not hold such a judgment of the Oregon court void and of no effect? Counsel for appellant invoke the provision of Section 1, Art. 4, of the Federal Constitution, that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." The argument seems to be that we are to blindly accept the judgment of the Oregon court wholly at its apparent face value, it being a simple money judgment, without inquiry or taking notice of the foundation upon which it rests. Thus counsel would have us ignore the allegations of the complaint in that action, which affirmatively show that there could be no lawful recovery therein at the time of the rendition of the judgment of the Oregon court, in that the judgment of the Washington court was rendered more than six years prior thereto.

Manifestly, the mandate of the federal constitution that full faith and credit shall be given in each state to "judicial proceedings" of a sister states does not mean that there can be accorded to such proceedings legal force and effect which they do not possess. Now when the Oregon court rendered its default judgment upon the judgment of the Washington court, it evidently did so without proof of the peculiar judgment law of Washington, and was thus induced to erroneously accord to the judgment of the Washington court greater force and effect than that judgment possessed under [fol. 31] the laws of Washington. That judgment, as we have seen, was the sole foundation upon which the Oregon judgment was rendered, and that being a default judgment, it was, therefore, (in any event as we may now view it in this action thereon in this state, we being enabled to take judicial notice of the Washington judgment law without proof,) void and of no binding force as a support of another judgment thereon in this state. In Public Works v. Columbia College, 17 Wall. (U. S.) 521, Justice Fields, speaking for the supreme court of the United States, said:

"No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered. Any other rule would contravene the policy of the provisions of the Constitution and laws of the United States on that subject."

In Reynolds v. Stockton, 140 U. S. 254, Justice Brewer, speaking for that court, also observed:

"The section of the Federal Constitution which is invoked by plaintiffs is section 1 of Article IV, which provides that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' Under that section the full faith and credit demanded is only that faith and credit which the judicial proceedings had in the other State in and of themselves require."

In Suydam v. Barber, 18 N. Y. 468, Chief Judge Johnson, speaking for the court after a somewhat exhaustive review of prior decisions, said:

"While the rule just stated as to the effect of judgments of one State in the courts of another is clear, as is established by the cases cited by Judge Cowen, and by numerous others, yet no case can be found where a greater effect is given to the judgment of any State in the courts of another than belongs to it in the State where it was rendered. Indeed, such a rule would be against all reason, and not only out of the policy of the provisions of the constitution and laws of the United States on that subject, but against and irreconcilable with all policy and with the plainest and fundamental principles of justice."

This pertinent observation, we think, can be as safely made today as in 1858 at the time of the rendering of that decision.

34 Cyc., 1128.

As to what relief, if any, respondent McDonald might have [fol. 32] as against the Oregon judgment, were it sought to be enforced in Oregon or sued upon in some state other than Washington, we express no opinion. It is enough for our present purpose to know by the record of the Oregon

case, as disclosed by this record, that that judgment was a default judgment; that its sole foundation was a judgment of the Washington court rendered more than six years prior thereto; and to judicially know that the Washington judgment, according to the law under which it was rendered, furnished no legal foundation for the rendering of the Oregon judgment, because of the absolute nullity of the Washington judgment by the then lapse of time. Under these circumstances we hold that the courts of this state in any event are not bound to give full faith and credit to the Oregon judgment according to its literal terms, but are privileged and have the duty to view that judgment in the light of the foundation upon which it rests and the judgment law of our own state. Had the peculiar Washington judgment law been appropriately brought to the attention of the Oregon court, it seems to us probable, practically to a degree of certainty, that the Oregon court would never have rendered its default judgment upon the Washington judgment. This, however, is of no legal consequence here.

The judgment of the superior court denying to appellant Roche the relief prayed for by him is affirmed.

Parker, J.

We concur: Tolman, C. J. Askren, J. Mackintosh, J.

[fol. 33] In Supreme Court of Washington

[Title omitted]

Judgment—November 30, 1925

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Spokane County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 30th day of November, A. D. 1926, on motion of Graves, Kizer & Graves, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; the petition for rehearing denied and that the said D. K. McDonald have

and recover of and from the said John H. Roche and from American Surety Company surety the costs of this action taxed and allowed at Eighty Nine & 40/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 34] In Supreme Court of Washington

[Title omitted]

Petition for Writ of Error—Filed January 25, 1926

To the Honorable Warren W. Tolman, Chief Justice of the Supreme Court of the State of Washington:

Your petitioner, John H. Roche, the appellant above-named feeling himself aggrieved by the final judgment rendered against him in this cause on the 30th day of November, 1925, respectfully asks that a writ of error issue from the United States Supreme Court to the Supreme Court of the State of Washington.

The matters to which the petitioner's grievance refers are specified in the assignments of error accompanying this petition.

It is further requested that the order allowing the writ of error fix the amount of a supersedeas and cost bond.

Dated at the City of Spokane, Washington, the 23rd day of January, 1926.

B. C. Mosby, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 35] [File endorsement omitted]

In Supreme Court of Washington

[Title omitted]

Assignments of Error—Filed January 25, 1926

Now comes John H. Roche, the plaintiff petitioner for a writ of error in the above entitled cause and, in connec-

tion with his petition, shows that in the record herein—particularly in the final judgment of the Supreme Court of the State of Washington—there have occurred material errors to his prejudice, namely:

First. The court erred in its determination that sections 459 and 460 of Remington's Compiled Statutes of Washington, limiting the lien and duration of judgments to six years, which statutes were pleaded in the defendant's answer and invoked in his brief to controvert the claims of the plaintiff—were valid and operative so that they precluded the right of the plaintiff to recover on the judgment in suit, rendered in his favor in the State of Oregon on the 1st day of October, 1924, upon a judgment entered in the Superior Court of Spokane County, State of Washington, on the 24th day of June, 1918. Because the protection afforded to the plaintiff, under the Constitution of the United States, Article IV, Section 1, was by such determination rendered nugatory.

Second. The court erred in its denial of Plaintiff's right, under the Constitution of the United States, Article *Article* [fol. 36] IV, Section 1—which right was set up in his reply, argued in the briefs of both parties, and adjudicated in the Washington Supreme Court's written decision—to have his judgment, recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion, accorded full faith and credit in the courts of the State of Washington.

On account of which errors the plaintiff prays that the judgment of the Supreme Court of the State of Washington, herein rendered, may be reversed and that the said tribunal be directed to enter a judgment in his favor, conformably to the prayer of his complaint.

B. C. Mosby, Attorney for Petitioner and Plaintiff in Error.

[fol. 37] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed January 25, 1926

On reading the Petition of John H. Roche, above-named plaintiff, for a writ of error and, his assignments of error and upon due consideration of the record of this cause;

It is ordered, That a writ of Error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Washington, as prayed for in the said petition and, that a writ of error and citation thereon be issued, served, and returned to the Supreme Court of the United States in accordance with law, upon condition that the said petitioner and plaintiff in error, John H. Roche, give a cost and supersedeas bond—to be approved by me as Chief Justice—in the sum of One Thousand Dollars, that he shall prosecute the said writ of error to effect and, if he fail to make his plea good, then that he shall answer to the defendant in error, D. K. McDonald, for all costs and damages that may be adjudged on account of the issuance of such writ.

In witness whereof, I have hereunto set my hand this 25th day of January, 1926.

Warren W. Tolman, Chief Justice of the State of Washington.

[File endorsement omitted.]

[fols. 38 & 39] Bond on writ of error for $1,000, approved and filed February 1, 1926, omitted in printing.

[fol. 40] In Supreme Court of Washington

[Title omitted]

Affidavit of Service of Praecipe—Filed March 9, 1926

State of Washington,
County of Spokane, ss:

I, Flora Sears, being first duly sworn, say that: I am an American citizen over twenty-one years of age; and that on the 8th day of March, 1926, in the City and County of Spokane, State of Washington, I served the attached praecipe for record upon D. K. McDonald, defendant in error in the above-entitled action by delivering to and leaving with the said McDonald a true copy of the said praecipe.

Flora Sears.

Subscribed and sworn to before me this 8th day of March, 1926. J. Webster Hancox, Notary Public in and for the State of Washington, residing at Spokane, Wash. (Seal.)

[File endorsement omitted.]

[fol. 41] In Supreme Court of Washington

[Title omitted]

Praecipe for Transcript of Record

To the Clerk of the Supreme Court of the State of Washington, Olympia, Washington:

You will please prepare and certify the following material parts of the record in the above-entitled cause, for the use of the Supreme Court of the United States, namely:

1. Complaint.
2. Answer.
3. Reply.
4. Findings of fact and Conclusions of Law.
5. Exceptions to Findings and Conclusions.
6. Judgment of the trial court.

7. Statement of facts, embracing only the Direct Examination of the Defendant and the Direct and Cross-Examination of John H. Roche as shown on pages 23 to 27 inclusive.

8. Certificate of the Clerk of the Superior Court of Spokane County.

9. Opinion rendered by the Supreme Court of the State of Washington.

10. Judgment of the Supreme Court.

11. Petition for Writ of Error.

12. Assignments of Error.

13. Bond with Chief Justice's approval.

14. Writ of Error.

15. Citation in Error with proof of service.

16. Praecipe for Transcript of record with proof of service.

17. Clerk's Certificate.

Dated this 6th day of March, 1926.

B. C. Mosby, Attorney for Plaintiff in Error.

Service of a copy of the foregoing praecipe is hereby acknowledged this — day of March, 1926. —— ——, Attorneys for Defendant in Error.

[fol. 42] [File endorsement omitted]

In Supreme Court of Washington

Writ of Error—Filed February 6, 1926

The United States of America, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Washington, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said

suit between John H. Roche and D. K. McDonald, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John H. Roche as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same at Washington, [fols. 43 & 44] on the seventh day of April, A. D. 1926, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the said Supreme Court, the 6th day of February, in the year of our Lord one thousand nine hundred and twenty-six.

Ed M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, by Price Huggins, Deputy. (Seal of the United States District Court, Western District of Washington.)

[fols. 45 & 46] Citation, in usual form, showing service on D. K. McDonald, filed March 9, 1926, omitted in printing.

[fol. 47] Clerk's certificate to foregoing transcript and return to writ omitted in printing.

[fol. 48] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Plaintiff in Error of Parts of the Record to be Printed, with Affidavit of Service—Filed April 12, 1926

State of Washington,
County of Spokane, ss:

I, Flora Sears, first being duly sworn, say that: I am an American citizen over the age of twenty one years; and that on the 6th. day of April, 1926, in the City and County of Spokane, State of Washington, I served the attached "Statement of Points" and "Designations for Printing" upon D. K. McDonald, the defendant in error in the above entitled action, by delivering to, and leaving with, the said McDonald a true copy of the said Statement and a true copy of the said Designations.

Flora Sears.

Subscribed and sworn to before me this 6th day of April, 1926. W. C. Losey, Notary Public in and for the State of Washington, Residing at Spokane, Wash. (Seal of W. C. Losey, Notary Public, State of Washington.)

[fol. 49] Designations for Printing

To the Clerk of the Supreme Court of the United States:

For the consideration of the points upon which the plaintiff in error relies, the following parts of the record are regarded as necessary, namely:

1. Complaint.
2. Answer.
3. Reply.
4. Findings of Fact and Conclusions of Law.
5. Exceptions to Findings and Conclusions.
6. Judgment of the trial court.

7. Statement of Facts, embracing only the Direct Examination of the Defendant and the Direct and Cross-Examination of John H. Roche as shown on pages 23 to 27 inclusive.

8. Certificate of the Clerk of the Superior Court of Spokane County.

9. Opinion rendered by the Supreme Court of the State of Washington.

10. Judgment of the Supreme Court.

11. Petition for Writ of Error.

12. Assignments of Error.

13. Bond with Chief-Justice's approval.

14. Writ of error.

15. Citation in Error with proof of service.

16. Praecipe for transcript of record with proof of service.

17. Clerk's certificate.

Dated the 6th day of April, 1926.

B. C. Mosby, Attorney for Plaintiff in Error.

[fol. 50] Statement of Points

On the hearing of this cause the plaintiff in error will rely upon the following points:

First. Section 460 of Remington's Compiled Statutes of Washington—which limits the lien and duration of judgments rendered in the State of Washington to six years—is invalid when construed, as was done by the supreme court of this state in the present case, so as to impair the force and effect of a judgment rendered in another state of the Union. Such a construction is forbidden by the Constitution of the United States, Article IV, Section 1.

Second. Section 460 of Remington's Compiled Statutes of Washington, if valid, is not to be interpreted so that it would preclude the right of the plaintiff to recover on the judgment in suit. For the reason that such interpretation would violate the protection afforded to the plaintiff under the Constitution of the United States, Article IV, Section 1.

Third. Section 459 of Remington's Compiled Statutes of Washington—which declares that "after the expiration of

six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor''—has no application to the cause at bar. [fol. 51] Because the Oregon judgment, upon which the plaintiff brought suit in the State of Washington, was rendered within less than a year prior to the commencement of the Washington suit. If that section was a factor in the Washington supreme Court's decision denying to the plaintiff the right of recovery against the defendant in error, then such denial constituted an unlawful deprivation of plaintiff's property and contravened the ''due process of law'' provision of Section I, Article XIV of the Amendments to the Constitution of the United States.

Fourth. Under the Constitution of the United States, Article IV, Section I, the plaintiff has a right to have his judgment—recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion—accorded full faith and credit in the courts of the State of Washington.

B. C. Mosly, Attorney for Plaintiff in Error.

[fol. 52] [File endorsement omitted.]

Endorsed on cover: File No. 31,801. Washington Supreme Court. Term No. 326. John H. Roche, plaintiff in error, vs. D. K. McDonald. Filed March 29th, 1926. File No. 31,801.

(31,801)

Supreme Court of the United States

OCTOBER TERM 1926

No. 326

JOHN H. ROCHE, PLAINTIFF IN ERROR,

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

SUBJECT INDEX OF THE MATTER IN THE BRIEF.

That full faith and credit was not given by the Supreme Court of Washington to the Oregon Judgment. See pages ..... 3, 4, 6, 7 and 8

That Section 460, Remington's Compiled Statutes of Washington, has no application to foreign judgments. See pages ..... 10 and 11

The Statute of Limitations of Oregon governed in a suit on a Washington judgment brought in the Oregon Court. Pages ..... 9 and 10

The Oregon Judgment sued on in this cause can not be collaterally attacked when the defendant was personally served in the suit in Oregon. See pages ..... 8 and 9

That the judgment of the Supreme Court of Washington contravened the "due process of law," provision of Section 1, Article 14, of the Amendments to the Constitution of the United States. Pages ..... 3 and 4

TABLE OF THE CASES.

Article 4, Section 1, Constitution United States.
Article 14, Section 1, Constitution United States.
Ann. Cas. 1913 D. 1292.
Ann. Cas. 18-1103.
Aurora vs. West, 7 Wall 82.
Burnham v. Douglas, 78 Wash. 394.
Chambers v. Baltimore O. R. Co., 207 U. S. 142-148.
Chinn v. Foster Milburn Co., 132 U. S. 107.
Christmas v. Russell, 5th. Wall. 290.
Converse v. Hamilton, 224 U. S. 243.
Cromwell vs. Sac County, 94 U. S. 351.
Fauntleroy v. Lum, 210 U. S. 230.
General Oil Co. v. Crain, 209 U. S. 211, 216, 220, 228.
Harju vs. Anderson, 133 Wash. 506.
International Text BookCo. v. Pigg, 217 U. S. 91.
Keyser v. Lowell, 54 C. C. A. 574. .117 Fed. 400
Murray vs. Murray, 6 Ore. 17.
M. Elmoyle, Etc. vs. John J. Cohen Etc., 38 U. S. 310.
Oregon Statutes—Olson's Law Code, Chapter 2, Section 5, Sub-division 1.
Remington's Compiled Statutes of Washington, Sections 459 and 460.

The judgment sought to be reviewed in this court is reported in 136 Washington Reports, pages 322 to 331 inclusive.

The grounds upon which the jurisdiction of this court is invoked is that full faith and credit was not given to the Oregon judgment when suit was brought upon it in the courts of Washington. Article 4, Section 1, of the Constitution of the United States. The date of said judgment in the Supreme Court of Washington is the 30th day of November, 1925. Transcript of Record, pages 23 and 24.

That the judgment of the Supreme Court of Wash-

ington contravened "due process of law," provision of Section 1, Article 14, of the Amendments to the Constitution of the United States.

The Plaintiff in error claimed in the lower Court and in the Supreme Court of the State of Washington as the basis of this Court's jurisdiction that full faith and credit was not given to the Oregon judgment sued on. Pages 1 and 2, and 7 and 8, Transcript of Record.

The ruling of the Supreme Court of Washington denied full faith and credit to the Oregon Judgment sued on. Pages 23 and 24. Transcript of Record.

Fauntleroy v. Lum, 210 U. S. 320.

Converse v. Hamilton, 224 U. S. 243.

Christmas v Russell, 5 Wall. 290.

International Text Book Co. v. Pigg, 217 U. S. 91. 18 Ann. Cas. 1103.

General Oil Co. v. Crain, 209 U. S. 211.

Kenney, Etc. v. Supreme Lodge of the World, Loyal Order of Moose, 252 U. S. 411.

County of Scotland in the State of Missouri, Plff. in Error v. William Hill, 132 U. S. 107.

STATEMENT OF THE CASE.

This action was commenced by the Plaintiff in error against D. K. McDonald in the Superior Court of the State of Washington, and County of Spokane. The action was to recover upon a judgment rendered in the Circuit Court of the State of Oregon, for the County of Marion, on the 1st day of October, 1924. See Transcript of Record, pages one (1), and two (2).

The Answer admits that the Court last above referred to had jurisdiction of the person of the defendant, D. K. McDonald. See Transcript of Record, pages 2, 3, 4 and 5. The Defendant, D. K. McDonald, in this case filed an Affirmative Defense. None of the allegations contained in the Affirmative Defense are pertinent to the issues in this cause and are no defense

whatever to the Complaint of Plaintiff. See Transcript of Record, pages 2, 3, 4 and 5.

Plaintiff in error filed a Reply to the Affirmative Defense of the defendant, D. K. McDonald, denying the material allegations (if any there were) of the Affirmative matter set up in defendants Answer.

A trial was had of the above cause in the Superior Court of the State of Washington for Spokane County, which trial resulted in a judgment for the defendant, D. K. McDonald. See Transcript of Record, page ten (10).

The plaintiff in the last named case appealed from said judgment to the Supreme Court of the State of Washington. On the 30th day of October, 1925, the Supreme Court of Washington affirmed the judgment of the Spokane County Court. See Transcript of Record, pages 16, 17, 18, 19, 20, 21, 22, 23 and 24.

On January 25, 1926, the plaintiff in error filed a Petition in the Supreme Court of Washington asking that a Writ of Error issue from the United States Supreme Court to the Supreme Court of the State of Washington. See Transcript of Record, page 24.

Plaintiff in error filed in the Supreme Court of Washington, Assignments of Error on January 25, 1926. See Transcript of Record, pages 24 and 25. The Writ was granted on January 25, 1926. See Transcript of Record, page 26. The Writ of Error was filed in the Supreme Court of Washington, February 6, 1926. A sufficient bond was given.

The Plaintiff in error designated the points upon which the plaintiff relies certain portions of the record, which the plaintiff in error regarded as necessary. See Transcript of Record, pages 30 and 31.

The Plaintiff in error made a statement of points upon which he would rely on the hearing of this cause. See Transcript of Record, pages 31 and 32.

Specification of Assigned Errors Intended to Be Urged.

First. The court erred in its determination that sections 459 and 460 of Remington's Compiled Statutes of Washington, limiting the lien and duration of judgments to six years—which statutes were pleaded in the defendant's answer and invoked in his brief to controvert the claims of the plaintiff—were valid and operative so that they precluded the right of the plaintiff to recover on the judgment in suit, rendered in his favor in the State of Oregon on the 1st day of October, 1924, upon a judgment entered in the Superior Court of Spokane County, State of Washington, on the 24th day of June, 1918. Because the protection afforded to the plaintiff, under the Constitution of the United States, Article IV, Section 1 was by such determination rendered nugatory.

Second. The court erred in its denial of Plaintiff's right, under the Constitution of the United States, Article IV., Section 1—which right was set up in his reply, argued in the briefs, of both parties, and adjudicated in the Washington Supreme Court's written decision—to have his judgment, recovered on the 1st day of October, 1924, in the Circuit Court of the State of Oregon for the County of Marion, accorded full faith and credit in the courts of the State of Washington.

ARGUMENT.

It is the contention of plaintiff in error that sections 459 and 460 of Remington's Compiled Statutes of Washington, as construed by the Supreme Court of the State of Washington, denied full faith and credit to the Oregon judgment sued upon. See the case of Thomas P. Kenney, administrator of the Estate of Donald Kenney, Petitioner and Plff. in err.,

v. Supreme Lodge of the World, Loyal Order of Moose, 252 U. S. 411. In this case this court used the following language: "In Fauntleroy v. Lum, 210 U. S. 230, it was held that the courts of Mississippi were bound to enforce a judgment rendered in Missouri upon a cause of action arising in Mississippi, and ILLEGAL and VOID there." The policy of Mississippi was more actively contravened in that case than the policy of Illinois is in this. Therefore, the fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment. See Christmas v. Russell, 5 Wall. 290, Converse v. Hamilton, 224 U. S. 243. Ann. Cas. 1913 D, 1292. But this being true, it is plain that a state can not escape its constitutional obligations by the simple devise of denying jurisdiction in such cases to Courts, otherwise competent. The assumption that it could not do so was the basis of the decision in International Text Book Co. v. Pigg, Y 217 U. S. 91. 18 Ann. Cas. 1103, and the same principal was foreshadowed in General Oil Co. v. Crain 209, U. S. 211, 216, 220, 228 and in Fauntleroy v. Lum, 210 U. S. 230, 235, 236, see Keyser v. Lowell 54 C. C. A. 574, 117 Fed. 400; Chambers v. Baltimore O. R. Co. 207 U. S. 142, 148, and cases cited. Whether the Illinois statute should be construed as the Mississippi act was construed in Fauntleroy v. Lum, was for the Supreme Court of the State to decide; but read as that Court read it, it attempted to achieve a result that the Constitution of the United States forbade."

The statutes of Washington, that the Supreme Court of Washington held, were valid statutes, and applied to judgments of a sister state when sued upon in Washington, are as follows: Sections 459 and 460, of Remington's Compiled Statutes of Washington: Section 459 reads as follows: "After the expiration

of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of a judgment debtor."

Section 460 is as follows: "No suit, action or other proceedings shall ever be had, on any judgment rendered in the STATE OF WASHINGTON by which lien or duration of such judgment claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."

These statutes, if valid, are not to be interpreted so that it would preclude the right of the plaintiff to recover on the judgment in suit for the reason that such interpretation would violate the protection afforded to the plaintiff under the Constitution of the United States, Article 4, Section 1.

The case of County of Scotland in the State of Missouri Pltff. in err. v. William Hill, 132 U. S., page 107, holds that: "An adjudication in a State court which binds the plaintiff, whether it is right or wrong, concludes him until it has been reversed or set aside. It can not be disregarded any more in the courts of the United States than those of the State."

It seems clear that the Supreme Court of the State of Washington denied full faith and credit to the Oregon judgment sued on in this case. D. K. McDonald, in his answer admitted that the Oregon Court had jurisdiction of his person but denied that it had jurisdiction of the subject matter. See Transcript of Record, page 2.

The Oregon judgment sued on in this case can not be collaterally attacked. The doctrine, that a foreign judgment can be attacked for want of jurisdiction of the person or subject matter does not apply when the judgment is rendered on personal service or the defendant has appeared. The defendant, McDonald,

was personally served in the Oregon suit. He can not in this cause attack a judgment rendered in the Oregon Court collaterally. Chin v. Foster Milburn Co., 195 Fed. 159.

The Statute of Limitations of Oregon govern in this cause. The Statute of Limitations of Oregon that has bearing on this case is as follows: "Olson's Law Code 1920, Chapter 2, subject—limitations of actions, section 5, sub-division 1; 'An action upon a judgment or decree of any court of the United States or of any State or territory within the United States.'", must be commenced within ten years.

In Federal Statutes—annotated—Volume 9—sub-division D—page 153 on the subject of Limitations, we find the following: "That the effect intended to be given under our constitution to judgments is, that they are conclusive only as regards the merits"; the common-law principle that applies to suits upon them, ~~that~~ they must be brought within the period prescribed by the local law, Lex Fori or the suit will be barred. Christmas v. Russell, 5th Wallace 301, and Keyser v. Lowell, C. C. A. 117 Fed. 400; see also case of Wm. M-Elmoyle for the use of Isaac S. Bailey v. John J. Cohen, administrator of Levi Florence, 38 U. S. 310.

This case holds that, the plea of the Statute of Limitations in an action instituted in one State on a judgment obtained in another State, is a plea to the remedy; and consequently the Lex Fori must prevail in such a suit. The foundation of the Oregon judgment was a judgment obtained in the Superior Court of the State of Washington for Spokane County against D. K. McDonald. The Statute of Limitations of Oregon applied to this judgment. The Statute of Limitations of Washington had ~~then~~ it been pleaded in the

Oregon suit would not have prevailed for the reason that the Lex Fori would control.

It seems plain that full faith and credit was not given the Oregon judgment when sued upon in the Superior Court of the State of Washington for Spokane County and that, that court was in error in not giving full faith and credit to said Oregon judgment and the Supreme Court of the State of Washington was in error when it affirmed the judgment of the Superior Court of Spokane County.

The law seems to be plain that the Statute of Limitations of Oregon, which limits the time for bringing actions upon judgments or decrees of any court of the United States or any State or territory within the United States to ten years, is the Statute of Limitations to be applied to the Washington judgment, when sued on, in the State of Oregon.

In Washington a suit can not be brought upon a judgment rendered in the State of Washington after the expiration of six years from the rendition of said judgment. Notwithstanding this statute it has no application to a suit upon a Washington judgment when sued upon in the State of Oregon. A suit upon a Washington judgment may be maintained in the State of Oregon after the Statute of Limitations of Washington has barred the judgment in Washington; the statute of limitations only effecting the remedy.

We call the Court's attention to the fact that suit was commenced in the Circuit Court of the State of Oregon in and for the County of Marion on the judgment rendered in the State of Washington against D. K. McDonald, long prior to the time that said judgment was barred in Washington, by the Washington Statutes of Limitations. Pages 3 and 4, Transcript of Record.

The Supreme Court of Washington in the case of

Brunham v. Douglas, 78 Wash., page 394, decided that Section 460 Supra. clearly does not apply to suits on foreign judgments. The suit in this case is based on a foreign judgment.

There was no jurisdiction in this last named case over some of the defendants, therefore, when that judgment was sued on in another State the other State did not have to give said judgment full faith and credit as to the defendants not served.

The Supreme Court of Washington endeavors to sustain its opinion by the cases of—Public Works v. Columbia College, 17 Wallace 521.

In the case at Bar there was jurisdiction over the person of the defendant and of the subject matter of the suit.

The other case cited by the Supreme Court of Washington to sustain its decision, is Henry F. Reynolds et al, plfs. in err. vs. Robert F. Stockton, 140 U. S. 254. In the last case cited, other and different relief from that asked in the complaint, was granted. Of course, this judgment was void in the State where rendered, therefore, it could not be given full faith and credit when sued on in another state.

The last cases cited by the Supreme Court of the State of Washington are no authority to sustain its decision. The cases are authority for the plaintiff in error.

McDonald, the defendant in error, filed a demurrer in the open court, which was overruled. He made no further response to the complaint and elected not to plead further.

If the defendant McDonald had any defense to the Washington judgment when sued on in the state of Oregon the law required that he present such defense in the Oregon court. Failing to make such defense the

judgment of the Oregon court is res adjudicata, when suit is brought in the state of Washington on the Oregon judgment.

He made no further appearance, and elected not to plead further. See Transcript of Record, p. 17.

We respectfully submit that the judgment of the Supreme Court of the State of Washington be reversed and that the said court be directed to enter judgment for the plaintiff in error in this cause.

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Spokane, Wash.

F. W. GIRAND,
(Of Counsel).